

The Department “will assume that the seller has accepted the purchase order at the place of business at which the seller receives such purchase order from the purchaser in the absence of clear proof to the contrary.” 86 Ill. Adm. Code 270.115(b)(2) (This is a GIL.)

October 17, 2003

Dear Xxxxx:

This letter is in response to your letter dated July 15, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings (“PLRs”) are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department’s regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.1120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am writing to you requesting a General Information Letter (GIL), pursuant to 2 Ill. Admin. Code Sec. 1200.120. The GIL contains a general discussion of the jurisdictional rules for application of local Retailers' Occupation Tax (ROT), as they relate to retail sales transactions in Illinois. GILs respond to inquiries made by taxpayers, and we understand that GILs discuss general tax principles or applications and are not binding on the Illinois Department of Revenue (the IDOR).

### **FACTS**

A business (the Corporation)--headquartered in City A, Illinois--sells construction products (i.e., building materials) to contractors and other retailers in Illinois. The Corporation also has a sales office, which is attached to a distribution center in City B, Illinois. The sales office is in City B because the Corporation believes that City B is within the region where its greatest future business expansion will take place. The Corporation's Senior Credit Manager is also located in City B. The Corporation has ten (10) other sales offices/distribution center locations throughout Illinois. The Corporation also employs sales representatives located throughout the state. Each sales representative is based out of a sales office/distribution center, which is the sales representative's home office.

## CASH AND COMMERCIAL CREDIT CARD SALES

The Corporation makes sales to walk-in customers at all of its sales offices/distribution centers. The walk-in customers are often residential homeowners. In these cases, the Corporation's clerk on-site takes the customer's order, accepts it, receives payment in cash or by commercial credit card (i.e., MasterCard, Visa), and allows the customer to leave the sales office/distribution center with the purchase or with an agreed-upon delivery date and location. The Corporation applies sales tax at the combined state and local tax rate imposed at the sales office/distribution center location where it makes the sale.

## ACCOUNT SALES

The Corporation also offers account sales (credit terms) to commercial customers to facilitate business transactions. These account sales are offered to commercial customers who make frequent and/or large-volume purchases. The customers establish an account with the Corporation for the timely acquisition of the construction products. The following steps outline the Corporation's procedures for making account sales in Illinois:

1. A new customer may view product samples with the Corporation sales representative either in one of the sales offices/distribution centers or at the customer's business. Some account sales customers (i.e. contractors, builders, masons) may send to the Corporation their own customers who as homeowners pick out certain designs and product lines which will be purchased eventually by the Corporation's account sales customers. Existing customers are typically familiar with the Corporation's product lines and will forward to the sales representative a list of necessary building products, blueprints, or housing-construction plans.
2. If the customer decides to purchase products, the sales representative prepares an inquiry, which identifies the customer, the sales representative, product type, style, quantity, estimated price, delivery date, and financing terms.
3. If the customer is new and wants to establish a line of credit with the Corporation, the customer completes a credit application. An existing customer buying on credit has its account number noted on the inquiry.
4. The sales representative forwards the inquiry to his home office.
5. The sales representative's home office then does the following:
  - a) It converts the inquiry into a preliminary sales order. <sup>1</sup>
  - b) It reviews the sales order for quality control purposes.
  - c) It reviews the customer's creditworthiness.
  - d) If the order meets quality control parameters, and the customer has demonstrated good credit, the home office submits the order for a final review and approval to the Corporation's Senior Credit Manager located in City B, Illinois.
  - e) If the order does not meet established quality parameters, or the customer displays insufficient credit, the order is placed on-hold and is sent to a sales credit coordinator in City A for further investigation.
  - f) The sales credit coordinator reviews the on-hold order and attempts to resolve its status by contacting for more information either the sales representative or the customer.

- g) The sales credit coordinator then submits for final approval or disapproval his finding and recommendation and the customer's order to the Senior Credit Manager.
- 6. Based on the information received from the sales representative's home office, the Corporation's Senior Credit Manager in City B, either accepts or rejects the customer's order by performing the following procedures:
  - a) If the Senior Credit Manager decides to accept the customer order, he unconditionally binds the Corporation to the terms and conditions of the sale as detailed therein. Sales representatives and their respective home offices do not have the authority to accept customer orders or to arrange for delivery of product until the Senior Credit Manager makes an affirmative order-acceptance decision.
  - b) The Senior Credit Manager retains a record of his decision, including the customer's order information, the results of the credit check, and his signed and dated order acceptance.
  - c) The Senior Credit Manager next confirms and transmits his order-acceptance decision.
  - d) The order is then printed and fulfilled at the distribution center location closest to the customer.
  - e) Upon receiving the Senior Credit Manager's decision, the customer order fulfillment team assembles the customer's order and arranges for sales invoice issuance, customer payment terms, and pick-up or delivery.
  - f) If the Senior Credit Manager rejects the customer's order, then the order is cancelled or is approved only as a cash sale.

## **ISSUE**

- 1. What state and local tax rate should be applied to cash and commercial credit-card sales?
- 2. What state and local tax rate should be applied to account sales?

## **LAW**

### **A. Sales Taxes**

#### **1. State Sales Tax**

Illinois imposes the Retailers' Occupation Tax (the ROT) on persons engaged in selling at retail within the state tangible personal property. Illinois imposes the tax at the rate of 6.25 percent of gross receipts from retail sales made. 35 ILCS 120/2-10; 86 Ill. Adm. Code Sec. 130.101.

#### **2. Home-Rule Sales Tax**

The Illinois Constitution authorizes home-rule units (e.g., municipalities) to exercise certain governmental powers. Sec. 6(a), Art. VII, Ill. Const. A home-rule unit may for example impose taxes upon occupations. Sec. 6(e), Art. VII, Ill. Const. In other words, a home-rule municipality may impose a tax upon all person engaged in the business of selling at retail within its municipality tangible personal property. The tax rate may be imposed in 0.25 percent increments. 55 ILCS 5/5-1006; 65 ILCS 5/8-11-1.

#### **3. RTA-ROT**

The state imposes a Regional Transportation Authority Retailers' Occupation Tax (the RTA-ROT) on persons engaged in selling tangible personal property at retail within certain counties. The RTA- ROT is imposed at rates ranging from 0.25 to 1 percent. 86 Ill. Adm. Code Sec. 320.101(a)<sup>2</sup>

### B. Order-Acceptance Point

In determining for taxing purposes the location of a sale, the IDOR believes that the single most important element is the location where the seller accepts the customer's purchase order.<sup>3</sup> 86 Ill. Adm. Code Sec. 270.115(b), (c), 220.115(c), 630.120(b), and 320.115. ST 02-0019 PLR (August 1, 2002), ST 01-0005 PLR (February 14, 2001), ST 01-0007-PLR (February 15, 2001), ST 01-0018-PLR (May 16, 2001), ST 01-0003-PLR (February 2, 2001), ST 00-0085-GIL (April 19, 2000), ST 00-0038-GIL (March 6, 2000), ST 00-0020-GIL (January 26, 2000) and ST 91-1008-PLR (December 18, 1991), ST 93-0569-GIL (November 8, 1993), and ST 92-0333-PLR (June 30, 1992). The IDOR will assume, absent clear proof to the contrary, that the seller accepts the purchase order (i.e., makes the sale or executes the contracting action) at the place of business where the seller receives it from the purchaser. 86 Ill. Adm. Code Sec. 270.115(b)(2) and (c)(1). This is the case regardless of whether or not the purchaser takes delivery there--provided that the purchaser does receive physical possession of the property somewhere in Illinois. If the order-acceptance point is in Illinois, the location from which goods are shipped is also not controlling in connection with the imposition of local sales tax. *Id.*

The presumption that the seller accepts the purchase order at the location of its receipt may be rebutted when clear proof demonstrates that acceptance of the order takes place elsewhere. The IDOR has explained in numerous Private Letter Rulings (PLRs) and General Information Letters (GILs) that the location where the seller accepts the customer's purchase order is the determining element. According to the PLRs and GILs, an order is accepted only when the seller takes action that binds it unconditionally to the terms and conditions of the order.

In ST 02-0019-PLR (August 1, 2002), the IDOR asserted that, if a purchase order is accepted in a jurisdiction that imposes a local sales tax, the tax will be incurred there. In the PLR, the IDOR established that the company did not become bound to the terms and conditions of its sales on account until the company's credit manager located in CITY2, Illinois accepted the customer's purchase order. The acceptance took place only after the credit manager made a final review of the customer's account and credit. Therefore, the location of the company's credit manager in CITY2, Illinois, and the credit manager's binding acceptance in CITY2 of the purchase orders for the sales on account, established CITY2 as the Illinois jurisdiction that determined for these sales where the local sales tax applied.

In ST 01-0005-PLR (February 14, 2001), it was explained that a company maintains two offices in Illinois: City 1 is the site of the branch sales office and shipping warehouse. City 2 is the office location of the customer credit and relations analyst (the analyst). Customer orders are submitted to the branch sales office in City 1 where they are entered into the sales computer system. The sales computer system establishes customer creditworthiness and conditionally approves customer orders. The analyst in City 2 accesses all conditionally-approved orders and conducts a final review of them. After conducting a final review, the analyst informs the company's warehouse and branch sales office that he has given final approval to the orders. The IDOR determined that, even though customers' orders were given conditional approval in City 1, City 2, where the analyst makes final approval, is the jurisdiction whose local tax rate should apply. The IDOR Stated that the place where the sale receives complete and unconditional approval determines what local sales tax rate should apply.

In ST 01-0018-PLR (May 16, 2001), customers are able to request pricing information from a company sales department. They may order products by phone or Internet, or from a sales representative. Orders are entered into the company's order-entry system and are conditionally approved once the customer's creditworthiness has been determined. The conditionally-approved orders are then sent for final approval to a credit analyst. The credit analyst researches the customer's credit history before making any final determinations on whether an order should be accepted or rejected. The IDOR stated that the credit analyst's evaluation of conditionally-approved orders constitutes the final action taken in accepting the purchase order. The location where the final approval takes place is the jurisdiction whose local tax applies.

In ST-93-0569-GIL (November 8, 1993), a retailer writes that salespeople located at a field office take its customers' orders. The salespersons enter the orders into a computerized order-entry system via remote hand-held transmitters plugged into telephone lines. The orders are then electronically transmitted to the retailer's central computer located at its corporate headquarters in CITY. The orders appear on a credit approval screen there. If approved by the headquarters' credit department in CITY, the orders are printed, and the items are shipped to the customers in Illinois. The IDOR opined in the GIL that the final acceptance of the orders takes place in CITY rather than at the field office where salespeople take customers' orders. Again, it is important to note that the IDOR does not consider an order accepted until a decision that binds the seller to the order has been made.

In ST 91-0162-PLR (March 5, 1991), an oil marketing and distribution company employs a customer service clerk to take customer orders and determine if the customer has a sales account with the company. If the customer has a sales account with the company, the clerk sends the order for credit approval to the credit manager. If the credit is approved, the customer order is sent to the Executive Vice President, at the same location, for price determination and pricing authority. A billing and pricing clerk then processes the order and submits it to the commercial sales office in City 3, Illinois where it undergoes a final acceptance process. The commercial sales manager there compares the customer's order to a master customer record to verify the accuracy of the customer's information. If the order is accurate, the commercial sales manager in City 3, Illinois accepts it. After acceptance by the commercial sales manager, the order is considered binding on the company and is faxed to the dispatch center for release. The IDOR confirmed that the sales acceptance point occurs in City 3, Illinois, and this should be the jurisdiction whose local sales tax applies.

## **ANALYSIS**

For walk-in sales, where the customer pays for the product with cash or a commercially-issued credit card, the order-acceptance locations--for purposes of imposing local sales tax--are the various sales office/distribution center locations. This is because the contractually-binding selling activity takes place there.

For account sales, the order-acceptance point is at the Corporation's sales office/distribution center located in City B, Illinois where the Senior Credit Manager is located. Purchase order-acceptance is determined as demonstrated by the following activities which take place there:

- The Senior Credit Manager performs a final review and approval of the customer's order based on its account and credit history, customer order information, and the recommendation received from the submitting home office.
- Upon determining that the customer's order information, credit history, and the recommendation are satisfactory, the Senior Credit Manager decides to accept the order, thereby binding the Corporation unconditionally to the terms and conditions of the sale as detailed therein.
- Sales representatives, store clerks, and office personnel at statewide sales office/distribution center locations do not have the authority to accept a customer's order for account sales, nor to arrange for any release and delivery of product, until they have received the Senior Credit Manager's final acceptance of the customer's order.

It is the Corporation's intention to accept or reject all account sales through its Senior Credit Manager located in City B, Illinois. Thus, the local sales tax imposed in City B, Illinois should apply to all of the Corporation's account sales.

### **CONTRARY AUTHORITY AND DISCUSSION**

Neither contrary authority nor discussion exists regarding the transactions described in this GIL.

### **CONCLUSIONS**

1. The facts of this case support the finding that the Corporation's order-acceptance points for its cash and credit-card sales are at its various sales office/distribution center locations. Thus the Corporation should remit to the IDOR the state and local ROT imposed upon retailers doing business at the various sales office/distribution center locations.
2. The facts of this case also support the finding that the Corporation's order-acceptance point for its account sales are at its Senior Credit Manager's office located in City B, Illinois. Therefore, with respect to account sales, the Corporation should remit to the IDOR the state and local ROT imposed upon retailers doing business in City B, Illinois.

We respectfully request that the IDOR issue a General Information Letter addressing the issues presented. Your cooperation is appreciated.

The Department's regulations state that "enough of the selling activity must occur within the home rule municipality to justify concluding that the seller is engaged in business within the home rule municipality with respect to that sale." 86 Ill. Adm. Code 270.115(a)(1). (emphasis added) The Department has opined that the seller's acceptance of the customer's purchase order is the "most important single factor" in the occupation of selling. However, when order acceptance activity takes place in more than one jurisdiction, the facts and circumstances surrounding the sale must be carefully scrutinized to assure that "enough" of the acceptance activity has occurred in the home rule municipality to justify the conclusion that the sale took place there. This inquiry will ordinarily be fact-intensive and require an examination of all of the processes and procedures performed by the seller from the time the customer contacts the seller until the goods are delivered. Significantly, the Department "will assume that the seller has accepted the purchase order at the place of business at

which the seller receives such purchase order from the purchaser in the absence of clear proof to the contrary." 86 Ill. Adm. Code 270.115(b)(2) (emphasis added.)

Ordinarily, therefore, the Department will not consider a home rule municipality to be the situs of the sale merely because a company representative physically housed in that jurisdiction performs a computer-assisted credit check on the prospective customer and "approves" or "releases" the purchase order. This is so even if the credit check is the final step in the company's order acceptance process. This is implicit in the Department's previous guidance that selling usually occurs where the purchaser accepts "a complete and unconditional offer to sell."

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk

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<sup>1</sup> The customer would consider this its purchase order to the Corporation.

<sup>2</sup> The board of commissioners of any county water commission district may also impose a sales tax on retailers of tangible personal property--the County Water Commission Retailers' Occupation Tax (the CWC-ROT). 70 ILCS 3720/4(a). The county may impose the CWC-ROT at a rate of 0.25 percent of the gross receipts from retail sales. 70 ILCS 3720/4(b). DuPage is currently the only county to impose the tax. All retailers doing business within the DuPage Water Commission district must collect the tax on their sales made there. Information Bulletin FY 88-12, Illinois Department of Revenue (the IDOR) December 1, 1987, 86 Ill. Adm. Code Sec. 630.101(a).

<sup>3</sup> "[T]he seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of such place of business ...or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the home rule municipality or by someone working out of such place of business, the seller incurs Home Rule...Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser receives the physical possession of the property in Illinois." 86 Ill. Adm. Code Sec. 270.115(b)(1).